

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3335 of 1984

Date of decision: 26-9-96

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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A.I. MULTANI

Versus

STATE OF GUJARAT  
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Appearance:

MR DM THAKKAR for Petitioner

Mr. Nigam Shukla for Respondent No. 1, 2  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 26-9-96

CAV JUDGEMENT

Heard the learned counsel for the parties.

Prayer is made by the petitioner in this special civil application for quashing and setting aside the seniority list prepared for the posts of junior clerks and circulated on 20th December, 1980.

2. The petitioner was appointed as junior clerk on

6-3-1969. The petitioner had passed the examination conducted by Centralised Recruitment Scheme on 26-5-1970. In the seniority list which is stated to have been circulated on 20th December, 1980 name of the petitioner has been shown at serial No. 227. The grievance of the petitioner is that under Rule 29 of the Gujarat Non Secretariat Clerks, Typists and Typists (Direct Recruitment Procedure) Rules, 1970 (hereinafter referred to as "the Rules") provision has been made for determination of seniority under Rule 29 thereof. As per these rules seniority has to be determined on the basis of merit assigned to each candidate in the selection.

3. This writ petition deserves to be dismissed only on the ground that the seniority list which is challenged by the petitioner has not been produced before this Court. Secondly, in para 4.1 the petitioner has mentioned the seniority list dated 20-12-1980 as provisional seniority list and if it is so then the writ petition is premature. Provisional seniority list is not final seniority list. It is subject to correction in case a case is made out by the petitioner in that regard. Last, but not the least, the persons above whom the petitioner claims seniority have also not been joined as party to this writ petition. It is a case where any decision in favour of the petitioner behind the back of the persons who have been shown senior to him under the said seniority list will affect the rights of those persons. Such decision would be against the principles of natural justice. Moreover, those persons are necessary parties to this petition. In absence of necessary parties the writ petition is not maintainable and the relief prayed for cannot be granted.

4. The matter may be considered from yet another point of view. In para 1.1 of the petition the petitioner has stated that petitions challenging the very seniority list and raising similar contentions being special civil applications No. 2231 of 1981 and 168 of 1984 and allied matters are pending and this Court while admitting those petitions has granted ad interim relief which is still continuing. So far as special civil application No. 168 of 1984 is concerned, it is pending. Special civil application No. 2231 of 1981 has already been decided by this Court on 1-3-1995. From the judgment which has been given by this Court in special civil application No. 2231 of 1981 it comes out that Circular dated 5-6-1980 has been withdrawn. Statement has further been made that for the purpose of determination of seniority provisions of Gujarat Non Secretariat Clerks, Clerks-Typists and Typists (Direct

Recruitment Procedure) Rules, 1970 shall be followed. It has further been stated that in fact final seniority list as per the said Rules was already prepared in the year 1986 and that the said list is already implemented subject to the final disposal of certain petitions pending in this court. The relevant part of the order of this court passed in special civil application No.2231 of 1981 reads as under:

"It is clarified that in case after the disposal of the pending petitions the Government is required to fully implement the said seniority list, the grievance of the petitioner that the action of the respondents to show the juniors of the petitioners above them is illegal and bad shall be considered in accordance with law, provided the Government accepts the submissions of the petitioners. In view of the above, nothing further is required to be done in the matter. Rule made absolute to the aforesaid extent with no order as to costs."

Under the circular dated 5-6-1980 criteria for seniority was laid down, which was withdrawn by the Government as stated by the learned counsel for the State Government.

5. Taking into consideration the aforesaid facts as well as the decision of this Court in special civil application No.3335 of 1984 this special civil application does not survive.

6. In the result the special civil application fails and the same is dismissed. Rule discharged.

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